

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE No. 333 of 2019**

**Case of Hotel Golden Emerald for adjudication of disputes with Maharashtra State Electricity Distribution Company Limited in respect of outstanding dues for the power supplied from wind projects.**

Hotel Golden Emerald ..... Petitioner

V/s

Maharashtra State Electricity Distribution Company Limited. .... Respondents

**CASE No. 334 of 2019**

**Case of Sulbha Subhash Lodha for adjudication of disputes with Maharashtra State Electricity Distribution Company Limited in respect of outstanding dues for the power supplied from wind project.**

Sulbha Subhash Lodha ..... Petitioner

V/s

Maharashtra State Electricity Distribution Company Limited. .... Respondents

**Appearance in both the Cases.**

For the Petitioners : Smt. Dipali Sheth (Adv.)  
For the Respondent : Shri. Ashish Singh (Adv.)

**Coram**

**I.M. Bohari, Member**  
**Mukesh Khullar, Member**

## COMMON ORDER

**Date: 13 August 2019**

1. The Wind Energy Generators in these Cases have filed present cases on 5 December 2019 under Section 86(1)(e) and 86(1) (f) of Electricity Act,2003 (**EA**) seeking adjudication of dispute with Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**) in respect of the outstanding dues for the power supplied from its WTG to MSEDCL. At the e-hearing held on 4 August 2020 the Advocate representing the Petitioners requested the Commission that, since similar issues have been raised in these Petitions, they should be heard together for which the Commission agreed. Hence this common Order.
2. Hotel Golden Emerald (**HGE**) and Sulbha Subhash Lodha (**SSL**) are jointly referred as the Petitioners.
3. **Main Prayers of HGE in Case No. 333 of 2019 are as follows:**
  - a) *Direct MSEDCL to pay the Petitioner all the amounts due and owing towards the outstanding invoices and DPC for the Ahmednagar Projects run by the Petitioner [dues as on November 15, 2019 only for reference of Hon'ble Commission are specified in Annex E] amounting to Rs. 57,61,025/- (Rupees Fifty Seven Lakh Sixty One Thousand and Twenty Five Only) towards outstanding invoices, and Rs. 43,70,627/- (Rupees Forty Three Lakh Seventy Thousand Six Hundred Twenty Seven Only) towards DPC as on November 15, 2019], within seven (7) days of the Order passed to that extent;*
  - b) *Direct MSEDCL to pay the Petitioner all the amounts due and owing towards DPC for the Dhule Project run by the Petitioner [dues as on November 15, 2019 only for reference of Hon'ble Commission are specified in Annex E] amounting to Rs.36,83,033/- (Rupees Thirty Six Lakhs Eighty Three Thousand Thirty Three only), as on November 15, 2019, within seven (7) days of the Order passed to that extent;*
  - c) *Direct MSEDCL to henceforth make payments for the wind energy generated by the Petitioner regularly and in timely manner, and comply with terms of the WEPAs in letter and spirit;*
  - d) *Direct MSEDCL to make payments along with DPC in case of any delays in making payment;*
  - e) *Direct the Respondent to pay carrying cost at the rate of 15% per annum of the delay in payment of the late/delayed payment surcharge by MSEDCL;*
4. **Similarly, main Prayers of SSL in Case No. 334 of 2019 are as follows:**
  - a) *Direct MSEDCL to pay the Petitioner all the amounts due and owing towards DPC for the Project run by the Petitioner [dues as on November 15, 2019 only for reference of*

*Hon'ble Commission are specified in AnnexF] amounting to Rs.19,41,121/- (Rupees Nineteen Lakh Forty OneThousand One Hundred Twenty One Only) towards DPC as on November 15, 2019, within seven (7) days of the Order passed to that extent;*

- b) Direct the Respondent to pay carrying cost at the rate of 15% per annum of the delay in payment of the late/delayed payment surcharge by MSEDCL;
- c) Award costs of these proceedings against MSEDCL and in favour of the Petitioner

**5. Petitioners in their Petitions have stated as under:**

5.1 Details of WEPA entered with MSEDCL which are under dispute in present cases are as follows:

Sr. No.	Case No.	Date of WEPAs	Project Site	Capacity (MW)
1.	333 of 2019	31 December 2005	Dhule	2.50
2.		5 March 2010	Ahmednagar	1.25
3.		5 March 2010	Ahmednagar	1.25
4.	334 of 2019	31 December 2005	Dhule	1.25

5.2 As per the terms of WEPA, Petitioners have been raising monthly invoices on MSEDCL for the energy generated and supplied, but MSEDCL has consistently delayed payments leading to imposition of DPC, and subsequent interest on DPC to the tune of 15% per annum, on the remaining amounts to be paid.

5.3 In order to support MSEDCL considering its financial crisis, Petitioners gave various undertakings in the year 2017 and 2018 for waiver of 100% DPC payments. Undertaking given in October 2018 was subject to MSEDCL clearing the outstanding payments on or before 31 October 2018. However, MSEDCL failed to make any payments till 31 October 2018 and therefore Petitioners are entitled to claim DPC for the power generated having due date from 1 October 2017 to 30 June 2018.

5.4 Pursuant to such waiver of DPC, MSEDCL made payments towards some of the invoices after considerable delay. Still there are outstanding payments as per details below:

Sr. No	Particulars	Case No. 333 of 2019		Case No. 334 of 2019
		Dhule Project	Ahmednagar Project	Dhule Project
1	Outstanding Principal amount (Rs.in lakh)	-	57.61	
2	Period of Principal amount	-	8/2019 to 10/2019	

3	Outstanding DPC amount (Rs. in lakh)	36.83	43.70	19.41
4	Period of DPC amount	1/2006 to 12/2018	10/2009 to 10/2019	1/2006 to 12/2018
5	<b>Total outstanding amount (Rs. In Lakh)</b>	<b>36.83</b>	<b>101.31</b>	<b>19.41</b>

**6. MSEDCL in its replies submitted on 28 April 2020 in both cases has stated as follows:**

**6.1 MSEDCL has made payment to Petitioners as follows:**

i) For Ahmednagar Projects (Case No. 333 of 2019) as against outstanding of Rs. Rs.0.58 Cr. for August 2019 to October 2019 generation month, MSEDCL has paid Rs.0.69 Cr. to the Petitioner from August 2019 to December 2019 generation month. Total outstanding in respect of Ahmednagar project is Rs.0.14 Cr. (As on 15 April 2020) for January and February 2020 generation month.

ii) For Dhule Project (Both in Case No. 333 and 334 of 2019) MSEDCL has paid all the dues under EPA and Short-Term PPA entered with Petitioner for Dhule projects that expired on 31 December 2018 and 30 September 2019 respectively.

6.2 The delay in payment of wind generators is basically due to low recovery (around 7%) from agriculture consumers, arrears of government departments for supply of electricity to public water works and streetlight consumers category etc. The Commission allowed provision for bad debts of 1.5% of receivables in MERC MYT Regulations. Thus, if there are no funds available with MSEDCL, because of delayed ARR, outstanding from Government and agricultural arrears, it may not be always possible to make timely payments to the wind generators.

6.3 Regarding carrying cost at the rate of 15% per annum on late/delayed payment surcharge it is stated that MSEDCL has filed the appeal before APTEL against MERC Order dated 2 August 2019 in Case No 105 of 2019 of M/s Rajlaxmi Mineral Ltd and appeal is still pending before tribunal for final judgement.

6.4 Payment for the energy supplied, along with payment of DPC for late payments, is a basic and express obligation of MSEDCL under the EPAs, and the failure to discharge it or to cure such failure within the stipulated time is an event of 'immediate default' and would, therefore, entitle the Seller to terminate the EPAs as per Clauses in EPA. Accordingly, Petitioners should be relieved of its obligation to supply power to MSEDCL so that they can sell its power to any other buyer who can make the payments promptly.

**7. Petitioners' submission in their Rejoinders dated 10 June 2020 is summarised below:**

- 7.1 Outstanding amount mentioned in the Petition was as on 15 November 2019. Post filing of these Petitions, MSEDCL has made some payment. Updated position of payments made, and the outstanding amounts is shown as below:
- a. In Case No. 333/2019, Petitioner has received payments for the invoices raised for Ahmednagar projects till December 2019 generation month only on 7 April 2020. As on 31 May 2020 an amount of Rs.26,06,031 is outstanding towards the principal amounts and an amount of Rs.26,190 is outstanding towards DPC for the period from January 2020 to March 2020. Further, all the payments for the invoices raised for the Dhule project have been paid under the WEPA for the months from May 2019 to September 2019 subsequent to the filing of the Petition.
  - b. In Case No. 334/2019, Petitioner has received the payments from MSEDCL till September 2019 generation month, however the DPC for same is still pending.
- 7.2 In case the payments were made belatedly, MSEDCL is required to pay such amounts along with DPC. By making such payment of invoices belatedly without DPC is in non-compliance of terms of WEPAs and various Orders of the Commission.
- 7.3 Petitioners vide various undertakings had waived off 100% DPC on power generated from the period of 1 April 2017 to 31 October 2018. However, the DPC from January 2019 onwards with intervening period is pending till date.
- 7.4 Despite such non-compliance of the terms of WEPA's, MSEDCL is suggesting alternatives such as termination of WEPAs. Thus, MSEDCL is indirectly conveying that it is not ready to comply with the terms of WEPAs and suggesting that in case HGE has an issue with the non-compliance it should terminate the WEPAs instead of calling upon MSEDCL to comply with the WEPAs. Without prejudice to foregoing, the termination of WEPAs is prerogative of HGE and the same cannot be directed by MSEDCL which is defaulting party.
8. At the hearing held on 4 August 2020 the Advocate of the Petitioners reiterated its submission and insisted that the Cases should be disposed of only after time bound commitment for paying all outstanding amount is received from MSEDCL. The Advocate of MSEDCL reiterated submission made in its reply and further stated that as part of financial support requested from Financial Institutions on account of financial crunch due to Covid-19, it has included outstanding payments of RE generators. The outstanding dues of RE generators will be directly paid by these Financial Institutions from amount approved to the MSEDCL. The Commission directed MSEDCL to submit its written submission within two days mentioning the details of outstanding payments and when it is proposed to be effected.

9. **MSEDCL in its additional submission dated 5 August 2020 has stated as under:**

9.1 As per MSEDCL record in Case No 333 of 2020 the outstanding principal amount is Rs. 76 lakh for generation month January 2020 to June 2020 and outstanding DPC is Rs. 58 lakh. In Case No 334 of 2020 only Rs. 15 lakh is outstanding towards DPC amount.

9.2 In pre-Covid-19 period when MSEDCL revenue was in the range of Rs 4500-5000 Cr per month, the revenue dropped to around 2000-2500 Cr per month during this lockdown period, hence MSEDCL was not in position to make timely payment to its generator.

9.3 MSEDCL has approached various Financial Institutions for borrowing money in order to repay the outstanding payments of various Renewable energy generators. MSEDCL has applied for loans and it is expected that it will be sanctioned by Financial Institutions in a month's time. As and when the amount is availed from financial institutions, the same will be paid directly by the Financial Institutions to the Petitioner for clearing its outstanding payment.

10. **Petitioners in their additional submission dated 7 August 2020 provided details of outstanding amounts as summarised below:**

<b>Sr. No</b>	<b>Particulars</b>	<b>Case No. 333/2019</b>	<b>Case No. 334/2019</b>
1	Outstanding principal amount (Rs.in lakh)	75.98	-
2	Period of principal amount	1/2020 to 6/2020	-
3	Outstanding DPC amount (Rs. in lakh)	88.68	21.08
4	Period of DPC amount	1/2006 to 9/2019 and 10/2009 to 5/2020	1/2006 to 12/2018 as on 31.5.2020
5	<b>Total outstanding amount (Rs. In Lakh)</b>	<b>164.66</b>	<b>21.08</b>

**Commission's Analysis and Ruling**

11. The Petitioners in both the Cases are Wind Generators who have been paid belatedly and some outstanding is yet to be paid by MSEDCL for the power supplied by them under their respective WEPA's. The Petitioners have approached the Commission through instant Petitions for payment of outstanding principal amount, DPC amount yet to be paid by MSEDCL and interest on DPC amount.

12. The Commission notes that the outstanding amounts for the Principal and DPC amount claimed by the Petitioners in the respective Petitions have been revised in their rejoinder and subsequently in additional submission as in the meantime some outstanding amounts have been paid by MSEDCL after filing of the Petitions. Further

the Petitioners have also claimed their outstanding dues on the latest date i.e by 31 July 2020. Similarly, MSEDCL has also indicated the latest outstanding dues yet to be paid. Hence the Commission considers the outstanding amount claimed by the Petitioners as per their latest submission vis-a-vis latest outstanding amount agreed by MSEDCL.

- 12.1 The amount claimed by the Petitioner in Case No 333 of 2020 for Dhule and Ahmednagar Projects and payments to be made as per MSEDCL is summarized as under:

Sr. No	Particulars	Claimed as per Petitioner	MSEDCL's submission
1	Outstanding principal amount (Rs.in lakh)	75.98	76
2	Period of principal amount	1/2020 to 6/2020	1/2020 to 6/2020
3	Outstanding DPC amount (Rs. in lakh)	88.68	58.00
4	Period of DPC amount	1/2006 to 9/2019 and 10/2009 to 5/2020	4/2006 to 3/2017
5	<b>Total outstanding amount (Rs. In Lakh)</b>	<b>164.66</b>	<b>134.00</b>

- 12.2 Similarly, amount claimed by the Petitioner in Case No 334 of 2020 for Dhule Project and payments to be made as per MSEDCL is summarized as under:

Sr. No	Particulars	Claimed as per Petitioner	MSEDCL's submission
1	Outstanding DPC amount (Rs. in lakh)	21.08	15.00
2	Period of DPC amount	1/2006 to 12/2018 as on 31.5.2020	4/2006 to 3/2017
3	<b>Total outstanding amount (Rs. In Lakh)</b>	<b>21.08</b>	<b>15.00</b>

13. The Commission notes that although claim of principal amount in Case No. 333 of 2020 is matching with amount agreed by MSEDCL, there is difference in amount of DPC submitted by the Petitioners and MSEDCL. Similarly, in Case No. 334 of 2019, there is difference in amount of DPC claimed by Petitioner and MSEDCL. The Commission does not intend to go into the details of outstanding DPC amount nor does it want to go into the details of the charges both parties have agreed mutually by considering the undertaking of waiver of DPC for certain period. The Commission expects and advises that the provisions of the WEPAs and also the other mutually agreed terms shall be adhered to in a fair and transparent manner by both the parties. Hence, the Commission directs both parties to reconcile the amount. MSEDCL shall ensure that the said reconciliation gets completed within 2 weeks and thereafter within a week inform the Petitioners and the Commission the date by which all outstanding amount would be paid.



14. On the issue of payment of outstanding amount, the Commission notes the financial difficulties pointed out by MSEDCL due to reduction in the revenue collection on account of Covid-19 and its submission that while approaching Financial Institutions for loans to mitigate financial crunch arisen due to Covid-19, it has included outstanding payments of RE generators in that proposal and once the amount is sanctioned by Financial Institutions (which is expected within a month), RE Generators will be paid directly by Financial Institutions without routing such amount through MSEDCL.
15. In view of the above submission made by MSEDCL the Commission opines that the delay in payment of dues is neither wilful nor deliberate. Further, MSEDCL has informed about it approaching the Financial Institutions to clear the outstanding amount of RE generators including present Petitioners and hence the Commission thinks it fit to provide opportunity to MSEDCL to clear the dues of Petitioners. Hence, the Commission directs Petitioners and MSEDCL to reconcile the amount. MSEDCL shall take necessary action as outlined in Para 13 above and if it deviates from its commitment of the agreed payment date, interest will be payable thereafter (beyond the date committed) at 1.25 % per month on any outstanding DPC amount.
16. Hence, the following Order:

**ORDER**

1. **The Case Nos. 333 of 2019 and 334 of 2019 are partly allowed.**
2. **Maharashtra State Electricity Distribution Company Limited is directed to reconcile the outstanding amount as claimed by Petitioners within two weeks from the date of this Order and thereafter MSEDCL shall inform within a week the date by which full and final outstanding DPC amount will be paid.**
3. **Further, Maharashtra State Electricity Distribution Company Limited should note that if it deviates from its commitment given, penal interest will accrue at 1.25% per month on any Delayed Payment Charges remained to be paid**

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I. M. Bohari)  
Member

  
(Abhijit Deshpande)  
Secretary

